



**FISHEL DOWNEY
ALBRECHT & RIEPENHOFF LLP**
Attorneys at Law

7775 Walton Parkway
Suite 200
New Albany, Ohio 43054
(614) 221-1216 PH
(614) 221-8769 FX
www.fisheldowney.com

Village of Williamsport Employment Investigation

**Report Prepared by: David C. Moser
Fishel Downey Albrecht & Riepenhoff, LLP**

Date: November 30, 2023

I. Introduction and Scope of Engagement:

This administrative investigation was conducted at the request of the Village of Williamsport, Ohio (the "Village") to review alleged inappropriate conduct and sexual harassment over time by Council Member Tim Bush. The alleged misconduct at issue was primarily directed toward Fiscal Officer Tracey Garrett beginning shortly after Mr. Bush was appointed to Council in early 2022. On or about August 30, 2023, Ms. Garrett provided to the Village Solicitor written statements from herself and several other individuals regarding complaints about harassing and inappropriate statements and behaviors by Mr. Bush over time. (Exhibits 1 and 2¹). As explained more fully below, the resulting investigation chiefly centered on three (3) separate encounters between Mr. Bush and Ms. Garrett from 2022-2023.

Ms. Garrett stated that she had previously, informally reported her concerns to the Village Council and Mayor John Elliott about Mr. Bush's behavior shortly after each encounter. No action was taken, however, until several members of Council encouraged Ms. Garrett to draft and gather written statements documenting the incidents involved. After receiving the written statements from Ms. Garrett, Village Solicitor Tom Spring received Council's approval to retain our law firm to serve as outside counsel to investigate Ms. Garrett's complaints.

Throughout the next few months, I (undersigned investigator David Moser) interviewed several individuals, including but not limited to Ms. Garrett, Mr. Bush, all current members of Council, and several Village employees. I further gathered documents and formulated recommendations regarding any appropriate response to Ms. Garrett's complaints about Mr. Bush. All interviews were audio-recorded with each person's knowledge and reviewed, in conjunction with relevant documents, in preparation for this final report.

II. General Background – Village of Williamsport Officials Involved:

Tracey Garrett has been employed by the Village as its Fiscal Officer since early 2022, appointed to the position immediately after serving as a Council Member for the previous 5-6 years. Previously an elected position, the Fiscal Officer position is now a Village employee serving at the pleasure of the Mayor and Council pursuant to O.R.C. § 733.262.

A few months after Ms. Garrett was appointed Fiscal Officer, Tim Bush was appointed to Council. Mr. Bush also previously served on Council for several years prior and has been a Williamsport community member his whole life. While this investigation was ongoing, Mr. Bush was elected Mayor on November 7, 2023. He assumes that office on January 1, 2024.

The Village of Williamsport is a statutory form of government, as described in Ohio Revised Code Title 7. In addition to Council and a President Pro Tempore, an elected Mayor oversees daily operations. Additionally, a Board of Public Affairs, consisting of three (3) elected residents, manages the Village's water, gas, and sewer systems.

¹ Copies of Exhibits have been included with the mailing of this Report to Council. Electronic copies can also be obtained upon request either to Investigator Moser or Solicitor Spring.

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According to applicable statutes and the Village's Employee Handbook², Village employees serve and may be terminated at will. Unlawful discrimination and harassment are expressly prohibited by Village staff or officials. Complaints regarding unlawful discrimination and harassment warrant a thorough and accurate investigation, which all Village employees are required to cooperate with. Should an investigation reveal such complaints to be valid, prompt action may be taken by the Village to prevent recurrence of such conduct.

For this investigation, I interviewed the following individuals both in person and/or by telephone: Pennie McCain (Council), Tracey Garrett (FO), Cindy Miller (Deer Creek Township FO and former Williamsport Council Member), Richard Watkins (Council), Cindy Mayhugh (Council), Melanie Smith (Traveling Auditor/Clerk), Nick Kennedy (Village Water/Sewer Contractor), Mary Beth Poe (Council), Matt Fields (Council), Gregg Hatfield (Maintenance Department), Tim Bush (Council), and Rob Fausnaugh (Resident).

III. Summary of Allegations:

Early into this investigation, it became clear that Tracey Garrett and Tim Bush do not get along. Several incidents and issues between these individuals have occurred since Mr. Bush joined Council approximately two years ago.

Notably, Mr. Bush revealed to me during the investigation that he has reported a complaint to the Ohio Ethics Commission ("OEC") about concerns he had with Ms. Garrett's appointment to the FO position in February 2022. Mr. Bush maintains that Ms. Garrett's actions in securing her employment as FO while still a Council Member were "illegal" and he believes OEC review and possible intervention is necessary. At the time of our interview, no other Village official or employee was aware of Mr. Bush's pending complaint with the OEC. He confirmed that he had kept that matter to himself.³ Mr. Bush was not yet appointed to Council at the time of Ms. Garrett's appointment as FO.

For purposes of this investigation, Ms. Garrett initially reported a broad range of alleged misconduct by Mr. Bush involving inappropriate, discriminatory, and harassing statements and conduct. The conduct allegedly involved the following:

- (1) On August 30, 2022, Mr. Bush angrily confronted FO Garrett, Ms. McCain, and Ms. Miller in the alley located between the Village offices and the Southwest Pickaway Fire Department. He was screaming, cussed repeatedly, and threatened to make sure that Ms. McCain lost her seat on Council.
- (2) On April 3, 2023, Mr. Bush demanded that Mr. Kennedy, a Village contractor, allow him to assist with clean-up work on a residential property located at 108 Mill Street. Mr. Bush

² A copy of the most recent draft Employee Handbook can be made available upon request.

³ For purposes of this investigative report, I did not discover any information related to Ms. Garrett's February 2022 appointment by Council to the FO position raising concerns of inappropriate or unlawful conduct. With that said, this report exclusively centers on complaints reported by FO Garrett involving Mr. Bush. This report offers no opinions or recommendations into the apparently pending OEC investigation about FO Garrett.

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required Mr. Kennedy to utilize equipment that Mr. Bush would provide, and Mr. Bush demanded half of the total payment of \$400 for completing this work. During the clean-up, FO Garrett arrived at the site to assist. Mr. Bush made repeated vulgar statements to FO Garrett regarding the bad smell (from the property), jokingly claiming that the odor was coming from Ms. Garrett's genitals and stating something to the effect of, "Your pussy stinks please close your legs" repeatedly, even after Mr. Kennedy asked him to stop.

- (3) On May 18, 2023, Mr. Bush was outside Ms. Garrett's house when he overheard her having a heated argument with her son. Mr. Bush allegedly hollered across the street, "That's why she can't keep anyone, she's a bitch!" He then proceeded to walk across the street to repeat the statement to Ms. Garrett's sister and niece.

While additional incidents and encounters were described throughout my investigative interviews, the above three (3) incidents were the common focus of Ms. Garrett's complaints against Mr. Bush. Prior to conducting investigative interviews, I had no knowledge about the nature of Ms. Garrett's complaints and had never previously met or communicated with any of the Village's officials or employees involved.

IV. Summary of Investigative Interviews:

All interviews occurred either in-person or via telephone. In-person interviews were taken at the Deer Creek Township Office, 9980 US-22, Williamsport, Ohio 43164, for privacy and confidentiality reasons. In-person interviews were audio-recorded with notice provided and consent received from all interviewees. Copies of these audio recordings have been maintained and can be provided upon request. The following presents relevant, detailed summaries from my notes and recordings with each of the interviewees:

I met with **Council Member Pennie McCain** on Wednesday, October 4, 2023 at the Deer Creek Township Office. Ms. McCain is serving her 12th year on Council and provided me with a rundown of the Village's organizational structure, including all elected and appointed officials. Ms. McCain ran for Mayor in the November 2023 election, losing to Mr. Bush who ran as a write-in candidate. Regarding Mr. Bush, Ms. McCain said that something about his behavior was very "off" since his appointment to Council in 2022. He would show up at odd times at her house simply to drop by and it always felt to her as if Mr. Bush was "fishing" for something. Ms. McCain said that Mr. Bush often does favors for residents in the community, and she has personally, slowly worked to cut off contact with Mr. Bush outside of Council activities because of his odd behavior that makes her feel uncomfortable.

Ms. McCain stated that Mr. Bush approached her, FO Garrett, and Ms. Miller on August 30, 2022 in the alley between the Village offices and the Fire District following a meeting. He drove up in his truck, slammed the door, walked up to Ms. McCain, and started yelling about recent issues in the Village, including his belief that BPA President Melissa Gartin⁴ needed to be paid for temporarily filling in for the vacant BPA Clerk position. Ms. McCain said that could not happen, because it was illegal and unethical to pay a public official for an employee's work, but Mr. Bush

⁴ Ms. Gartin resigned from her BPA role with the Village while this investigation was pending.

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did not want to hear it. He screamed directly in her face and said that he would end her political career in the Village and that he would take her Council seat from her. During this interaction, Ms. McCain got a phone call from her husband, recently hospitalized, and left the scene feeling fearful for her safety given Mr. Bush's anger. She contacted Mr. Hatfield, a Village employee, who also contacted Council Member Watkins, describing the incident.

Ms. McCain has limited her communication with Mr. Bush since that incident. She said that Mr. Bush only referenced it once, prior to a Council meeting in front of all Council members, stating he was "sorry about what went down in the alley." Afterward, Ms. McCain recalled that FO Garrett brought up this and other concerns about Mr. Bush to Council on or about March 21, 2023. She said FO Garrett asked to be left alone by Mr. Bush and Ms. Gartin, both of whom FO Garrett felt were targeting her and trying to remove her from her position. Ms. McCain noted FO Garrett's repeated complaints about Mr. Bush showing up while FO Garrett worked at the Village office, requesting copies of the Village's books, ordinances, and finances. She believed that Mayor Elliott had not done anything to protect FO Garrett or respond to her ongoing complaints about Mr. Bush. Thereafter, Ms. McCain and other Council members urged FO Garrett to write down her complaint and gather witness statements – ultimately, these were submitted to Solicitor Spring.

I also met with **FO Tracey Garrett** on Wednesday, October 4, 2023 at the Deer Creek Township Office. FO Garrett told me that she was appointed to her position by Council on February 9, 2022, after serving on Council for 5-6 years. In addition to her FO duties for the Village, she also serves as Zoning Inspector for Deer Creek Township.

Regarding Mr. Bush, FO Garrett noted they were previous acquaintances and she initially encouraged him to go for the vacant Council seat to which he was ultimately appointed. Yet, FO Garrett recalled numerous instances after Mr. Bush came on Council in which he made inappropriate jokes that made her uncomfortable. When she first assumed the job, FO Garrett received training from Cindy Miller and spent many late nights catching up to speed at the Township offices. Mr. Bush would often show up and make vulgar, sexual comments mentioning sex, dildos, and other inappropriate remarks. She stated this interrupted her work and that he would not leave even when requested. FO Garrett stated that Mr. Bush constantly requested the Village "books" and records, interrupting her work until she responded. On another unspecified date, FO Garrett recalled how she was chatting with the former Village clerk about zucchinis that she grew. Mr. Bush overheard and said something to the effect of, "I know, you can use it for a dildo." FO Garrett stated that Mr. Bush did become quiet when she told him that comment made her uncomfortable. Other comments by Mr. Bush were made on training trips, referencing porn, dildos, and other explicit sexual matters.

On May 18, 2023, FO Garrett also recalled Mr. Bush shouting from across the street that she was a "bitch." This occurred while FO Garrett was working in her flower beds in front of her house with her sister and engaged in an argument with her son. In response, FO Garrett yelled for Mr. Bush to "fuck off." She said that Mr. Bush would not let up, insisting on telling her sister "that's why Tracey is single" after having observed FO Garrett arguing with her son. She said Mr. Bush stated, "I couldn't be with her [FO Garrett] because she's a bitch." FO Garrett said she did not appreciate those comments and later followed up with Mr. Bush via text message telling him to back off and that she was not, in fact, single. Throughout and after this incident and others, FO

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Garrett noted how Mr. Bush continued calling and/or showing up at the Village to review the books. He did so on September 21, 2023, knocking on FO Garrett's office door while she was on the phone, demanding to be let in and waiting on the sidewalk outside until she let him inside.

Earlier, on April 3, 2023, FO Garrett stated that a property on Mill Street was in dire need of clean-up. Neighbors had complained about rubbish, junk, drugs, and human fecal matter causing odors. Mayor Elliott directed employees Gregg Hatfield and Mark Brungs to clean up the property; instead, FO Garrett hired independent contractor Nick Kennedy to do the clean-up, as it required extreme professional care and special equipment. According to FO Garrett, Mr. Bush showed up and "pushed himself on Nick," forcing him to allow Mr. Bush to assist with cleaning up the property and utilizing equipment which he would secure. When cornered by Mr. Bush, FO Garrett said that Mr. Kennedy agreed to Mr. Bush's request to receive half of the pay for this job. FO Garrett later saw the clean-up occurring on the property earlier than expected. After asking Mr. Kennedy about it, Mr. Kennedy indicated that Mr. Bush had told him to do the work that day, told him to pay him for it, and told him to be quiet about it.

Furthermore, FO Garrett said when she arrived at the property clean-up, Mr. Bush made repeated comments joking about the bad smell and claimed that it was coming from FO Garrett's legs. She recalled that he said, "close your legs, it's your pussy" repeatedly while she stood there with Mr. Kennedy watching. She was humiliated. FO Garrett said Mr. Kennedy told Mr. Bush to stop, but Mr. Bush kept on going with the joke and laughed. FO Garrett then left and went home. She later learned that the skid steer which Mr. Kennedy was forced to use by Mr. Bush had broken down off US-22 and went to help Mr. Kennedy with securing the equipment and getting home.

Prior to this incident, in January 2023, FO Garrett also recalled a visit by the Village's Traveling Clerk/Auditor, Melanie Smith. During the visit, Mr. Bush showed up at the Village offices and surreptitiously recorded their conversation, which Ms. Smith was upset about when she later learned it was recorded after the fact. FO Garrett feels that Mr. Bush was purposely working with Ms. Gartin at the time to remove FO Garrett from her position and wanted to make her look bad in front of Ms. Smith. She maintained that Mr. Bush considers FO Garrett incapable of doing her job as FO. She noted animosity between herself and Ms. Gartin as well, believing much of it stems from Mr. Bush's requests for Ms. Gartin to be paid while she temporarily filled in for the BPA Clerk role. FO Garrett informed me that the Village received an opinion from the Ohio Ethics Commission on this matter, advising that it was unethical and illegal for Ms. Gartin to be hired and paid, even temporarily, by the BPA. (Exhibit 3).

Regarding the August 30, 2022 encounter in the alley, FO Garrett's account was similar to both Ms. McCain and Ms. Miller's recollections. She said that Mr. Bush was yelling throughout. FO Garrett admitted that she did get back in Mr. Bush's face during this encounter. She said Mr. Bush stated that, "I'll make sure she [referring to Melissa Gartin] gets paid one way or another." He also told Ms. McCain that he'd "make sure you lose your fucking [Council] seat." FO Garrett stated she felt scared following this incident because Mr. Bush can "go from 0 to 60 real quick" when agitated. She said that his "switch" can easily flip.

I also met with **Deer Creek Township FO Cindy Miller** on Wednesday, October 4, 2023 at the Deer Creek Township Office. Ms. Miller previously served on the Village's Council for 12 years

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before departing for service with the Township. She has extensive public fiscal experience, also previously serving as FO to the Fire District. She assisted with training FO Garrett when she first assumed the Village FO role in early 2022.

Regarding Mr. Bush and the August 30, 2022 encounter in the alley, Ms. Miller very similarly repeated her recollection along with FO Garrett and Ms. McCain's accounts. She said that Mr. Bush clearly knew what he was saying and did not appear intoxicated. She said Ms. McCain was also letting him "have it" and that FO Garrett appeared upset by the interaction. Mr. Bush wanted Melissa Gartin to be paid for her BPA work and was belligerent. Thereafter, Ms. Miller told FO Garrett that she did not want to be around him.

Ms. Miller further stated that Mr. Bush can frequently make remarks that make her feel uncomfortable, though she could not recall specifics. She stated she has witnessed Mr. Bush interrupt FO Garrett while doing her work, constantly requesting the books, and believing FO Garrett to be incompetent (which Ms. Miller disagrees with). She commented that he has frequently shown up at the Village offices when she and FO Garrett were locking up; she wondered how Mr. Bush even knew they were there. She has observed that Mr. Bush does not listen to FO Garrett during Council meetings and seems to constantly be picking fights with her. She believes that Mr. Bush has been "real hard" on FO Garrett at Council meetings.

Ms. Miller reiterated her accounts, like Ms. McCain, of odd behavior by Mr. Bush, noting that he was always driving around the Village and would regularly offer her rides, which she usually refuses. She mentioned that he tends to "stick his head" in Township matters and further mentioned concerns about Mr. Bush's involvement in placing audio/video recording devices in the Village offices without anyone else's knowledge. She also stated that FO Garrett has notified her about these ongoing issues with Mr. Bush. In response, Ms. Miller encouraged FO Garrett to document her complaints and submit them to the Village.

I returned follow-up phone calls to **FO Garrett** on October 10 and 17, 2023. FO Garrett remembered another incident from on or about February 2023 in which Mr. Bush drove up next to her vehicle while she was working as a part-time school bus driver. She stated that Mr. Bush demanded her to come with him, or follow him, to the Village offices in order to check the Village books. According to FO Garrett, Mr. Bush did not believe she should be working for the school, while also working for the Township and Village. FO Garrett also relayed concerns about Mr. Bush and the Fire Chief pointing cameras from the building next door to the Village offices directly at FO Garrett's workspace. This made her very uncomfortable. Since then, the cameras have been covered and/or moved.

I interviewed **Council Member Richard Watkins** by telephone on October 24, 2023. Mr. Watkins was appointed to Council in early March 2022, filling the seat vacated by FO Garrett to assume the Fiscal Officer position. Mr. Watkins had never met Mr. Bush prior to coming on Council. Mr. Watkins has heard consistent versions of the events from August 30, 2022, April 3, 2023, and May 18, 2023, involving Mr. Bush and others as set forth above, but he directly witnessed none of them. Mr. Watkins said he and Mr. Bush got along while working together on Council at first, but that relationship has deteriorated, according to him, based on Mr. Bush's

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conduct. Recently, Mr. Watkins and Mr. Bush engaged in a heated discussion during a Council meeting that resulted in Mr. Watkins slamming his fist on the table.

Regarding the April 3, 2023 property clean-up, Mr. Watkins was told directly by Mr. Kennedy that Mr. Bush had demanded payment for the work. Mr. Kennedy also relayed the vulgar statements Mr. Bush had made towards FO Garrett while at the property. Mr. Watkins could not confirm nor deny whether Mr. Bush actually received such payment for the work but noted that this incident significantly raised his concerns about Mr. Bush. He told me that Mr. Bush has generally stated in the past that he feels he (Mr. Bush) should get paid for all the work he does around the Village.

Mr. Watkins repeated the same concerns about Mr. Bush showing up unexpectedly at odd times at the Village offices and elsewhere. He said Council has told Mr. Bush numerous times to leave FO Garrett alone so that she can get her job done. Yet, he believes that Mr. Bush continues to repeatedly show up and ask FO Garrett for financial records of the Village.

I interviewed **Council Member Cindy Mayhugh** by telephone on October 25, 2023. Ms. Mayhugh has been on Council since 2008, currently serving as President Pro Tempore. Like other Council members, Ms. Mayhugh did not directly witness any of the events involving Mr. Bush complained of by FO Garrett. She said that FO Garrett called her in tears after the April property clean-up regarding comments that Mr. Bush had made to her. Ms. Mayhugh relayed her opinion that Mr. Bush's attitudes seemed to change when Melissa Gartin filled in temporarily as BPA Clerk and was not paid for her work; she claimed that Mr. Bush started being belligerent towards FO Garrett from that time onward.

Ms. Mayhugh stated that, despite Council's requests for Mr. Bush to leave FO Garrett alone, Mr. Bush has not listened. She said he still shows up regularly during FO Garrett's work. She said the Village offices are small, with not a lot of room, making his constant presence a significant interruption to FO Garrett. Ms. Mayhugh also stated that Council has asked Mr. Bush to be more professional towards FO Garrett. She said generally that Mr. Bush makes off-color jokes and comments all the time. On one occasion, unrelated to FO Garrett, she said she saw Mr. Bush while filling up at the gas station. Mr. Bush noticed Ms. Mayhugh paying for her gas fill-up and jokingly said something to the effect of how that would mean her husband would have more of his own money to pay for porn.

I also interviewed **Traveling Auditor/Clerk Melanie Smith** by telephone on October 25, 2023. Ms. Smith had been asked to provide a written statement about a meeting at the Village offices involving FO Garrett and Mr. Bush in early 2023. (Exhibit 2). According to Ms. Smith, on January 26, 2023, she went to the Village to help FO Garrett with balancing the Village's financial books. She stated that Ms. Gartin was also present and was not using appropriate spreadsheets in monitoring the Utility Department's accounts. Ms. Smith said that FO Garrett called Mr. Bush in for assistance with the Utility Department situation. She said that upon arrival, Mr. Bush immediately seemed to be targeting FO Garrett and looking for mistakes on her part rather than attempting to resolve the situation with a solution. She believed that Mr. Bush clearly wanted to terminate FO Garrett's employment and seemed to be protecting Ms. Gartin. After the meeting,

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Ms. Smith learned that Mr. Bush had tape-recorded their encounter without her consent, which upset her.

I met with **Nick Kennedy** on Monday, October 30, 2023 at the Deer Creek Township Office. Mr. Kennedy works part-time for the Village as a water/sewer operations contractor. He is not an employee but rather an independent contractor and does similar work for several municipalities as a solo contractor for Kennedy Treatment Solutions, LLC. It took significant time for me to arrange Mr. Kennedy's interview as he was hard to reach. He admitted during the interview that he was very hesitant and nervous to speak with me but that it was important to participate.

Mr. Kennedy spoke to me about the incident involving the property clean-up on April 3, 2023. The day prior, he was contacted by Mr. Bush, Mayor Elliott, and FO Garrett and asked to perform work clearing the property. Mr. Bush then came to Mr. Kennedy's office and insisted that he help Mr. Kennedy with the clean-up, "badgering" him into using equipment that Mr. Bush would secure and demanding to be paid half of the \$400 total for the work and dumping the trash collected from the property. Mr. Kennedy told me he "felt pressured" given Mr. Bush's position on Council – Mr. Kennedy's work for the Village is subject to an annual contract reviewed and approved by Council, of which Mr. Bush holds a vote. Mr. Kennedy was very reluctant to pay Mr. Bush and use his equipment for insurance reasons but relented to Mr. Bush's requests because he felt he had to. Mr. Kennedy did not want to say "No" to a Council member and stated that Mr. Bush was very "pushy" about these requests.

Mr. Kennedy confirmed the allegations of inappropriate statements made by Mr. Bush towards FO Garrett while the three individuals were all at the property. He recalled Mr. Bush saying, "Whew, what's that smell" while referring to the property and told FO Garrett to close her legs. He said Mr. Bush stated "your pussy stinks" to FO Garrett and kept making repeated vulgar jokes related to female genitalia. Mr. Kennedy described Mr. Bush's comments as "wildly inappropriate" and observed FO Garrett become quiet and then cowered and hid behind Mr. Kennedy. Mr. Kennedy said he told Mr. Bush to stop saying those comments, that FO Garrett was very clean and that Mr. Bush was being inappropriate. Mr. Kennedy said this did not stop Mr. Bush from continuing the comments. He observed FO Garrett to be blindsided in response and said she did not fire back or respond to Mr. Bush with any vulgar comments of her own. In total, the comments lasted approximately 15 minutes during the 2-2 ½ hour cleanup. Mr. Bush was present the whole time.

After the clean-up was complete, Mr. Kennedy said he gave Mr. Bush the \$200 payment in cash for Mr. Bush's half of the job. Mr. Kennedy did not know what Mr. Bush did with the cash and stated there was no record of this transaction. Mr. Kennedy further stated he had not spoken with FO Garrett about this investigation, let alone planned or coordinated any of the information he shared with me with FO Garrett prior to our interview.

I also spoke with **Council Member Mary Beth Poe** on the telephone on Monday, October 30, 2023. Ms. Poe has been on Council for about 8 years. She was familiar with the alleged incidents occurring over time between FO Garrett and Mr. Bush but never directly witnessed any such incidents. Ms. Poe iterated that Mr. Bush has been unprofessional during Council meetings. On one occasion, she recalled that he shouted at a visitor to the public meeting to "get the fuck out." She also stated that Mr. Bush had made inappropriate and off-color jokes in her presence while

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attending professional training trips for the Village, but maintained none of these jokes that she witnessed were targeting any individual person.

I also interviewed **Council Member Matt Fields** by Zoom teleconference on Monday, October 30, 2023. Mr. Fields has been on Council since January 2020 and stated that he had been specifically calling for this investigation for a long time. Mr. Fields indicated how these concerns all arose prior to the recent election and maintained that nothing related to the complaints against Mr. Bush was politically motivated or linked to his write-in campaign for mayor. He was aware of all three incidents involving Mr. Bush and Tracey Garrett mentioned in the initial complaint after hearing of them from FO Garrett and Ms. Miller. He did not witness any of the incidents himself.

Regarding Mr. Bush's initial appointment to Council, Mr. Fields stated that he and Mr. Bush initially got along very well. However, Mr. Fields stated that he now wished Mr. Bush had never been appointed to Council. He said that shortly after his appointment, Mr. Bush became abrasive and discordant on Council, seeming to always be fishing for something and to have something up his sleeve. Mr. Fields described in detail some negative political history involving Mr. Bush on past projects and developments in the Village. He explained that Mr. Bush's actions have led to escalating "drama" within Village operations and was frustrated that it had reached this level.

Mr. Fields could not remember specific inappropriate comments that Mr. Bush had ever made in his presence. He did recall an instance where himself, Mr. Bush, Mr. Watkins, and FO Garrett attended a training seminar in Cincinnati. During the trip, Mr. Fields stated that Mr. Bush had said some things to FO Garrett in the car, which he could not specifically remember, but which were "a little off-putting" and at least holding some sexual undertones. He noted that the comments that day were "fun and playful" and did not result in any negative response or complaints but thought of this example considering these pending allegations.

Mr. Fields reiterated similar knowledge of most other individuals interviewed regarding Mr. Bush showing up at the Village office at odd times while FO Garrett was working. He raised concerns about Mr. Bush planting some recording devices in the Village offices and had significant concerns about Mr. Bush handling cash for Village matters.

I spoke with **Maintenance Department Employee Gregg Hatfield** by telephone on Wednesday, November 1, 2023. Mr. Hatfield's name came to me from a police report he had filed involving a confrontation with Mr. Bush in 2020 at the Post Office. I do not find that incident relevant to this investigation. Mr. Hatfield stated he told everyone at the Village about this encounter when Mr. Bush first came on Council in 2022, because Mr. Hatfield feared for his job, but things have calmed down a bit since then. He had no direct knowledge of any incidents between FO Garrett and Mr. Bush, although he had heard things.

I met with **Council Member Tim Bush** on Wednesday, November 15, 2023 at the Deer Creek Township Office. Prior to meeting, when I spoke with Mr. Bush over the phone about interview arrangements, he initially stated that he would "tell [me] fucking nothing" if I was bringing him to court. I explained how this is an internal investigation, that I am not a prosecutor for purposes of

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this report, and that I was asking him to cooperate with the investigation as an elected official of the Village. He eventually relented and agreed to meet.

Mr. Bush confirmed his appointment to Council in April 2022, status as a lifelong resident of the Village, and recent election as the Village's next Mayor.

As to the August 30, 2022 confrontation with Ms. McCain and FO Garrett (he did not recall Ms. Miller being present) in the alley between the Village offices and the Fire District, Mr. Bush informed me how he had mainly been upset about the fact that Melissa Gartin was not being paid for her BPA duties at the time. He thought it was "bullshit" that Ms. Gartin was receiving no pay and indicated that the rest of Council had been "dragging their feet" in filling the BPA Clerk post temporarily being filled by Ms. Gartin at the time. He admitted that he was upset and swore throughout the encounter but could recall making no threats about ensuring that Ms. McCain lost her seat on Council. He stated that FO Garrett yelled back at him and eventually walked off. When I asked him whether he apologized to them later for this incident, he acknowledged that he did apologize to both because he "swore" at the them and yelled. He stated they apologized as well.

During this portion of the interview, Mr. Bush kept referring to an Ohio Ethics Commission investigation that he has reported about FO Garrett. He kept repeating the fact that he had contacted the OEC yesterday and confirmed that the investigation was still ongoing. When he first learned of and approved my law firm's retention to conduct an internal investigation, he believed that it was somehow connected to this OEC matter, which he acknowledged he had told no one about. He claimed that FO Garrett unlawfully negotiated her FO salary while still a Council member. He stated her conduct was illegal, but confirmed he was not even on Council at the time. As stated previously, I do not find these allegations pertinent to this investigation and further found no evidence to substantiate any of Mr. Bush's claims against FO Garrett.

Regarding the April 3, 2023 property clean-up, Mr. Bush stated he had a personal connection to the property at 108 Mill Street. His dad lived there and it was Mr. Bush's childhood home. His family has not owned the property for at least 20 years.

Mr. Bush claimed that Mr. Kennedy asked him for help with the clean-up when the two interacted that day at the Water Department.⁵ In response, Mr. Bush said he told Mr. Kennedy that he would rent him the equipment to help with the work. He stated that Mr. Kennedy did not hesitate at all about this proposal, and stated, "Ok, let's do it." At this point in the interview, Mr. Bush's answers became somewhat confusing and almost contradictory. He said that Mr. Kennedy did tell him that Mr. Kennedy had his own equipment to use, but then indicated that Mr. Bush's friends in the community had equipment that would better serve this purpose. He indicated that he frequently volunteers and uses his friends' equipment to clean up properties throughout the Village, pays the applicable trash dump fee (between \$70-\$80), and pays a rental fee to the friends for use of the equipment. He provided the names of Rob Fausnaugh and Rick Griffen as two individuals whom he frequently borrows equipment from, including trailer(s) and a skid steer. Mr. Bush stated that he pocketed no payment from any of this work and cleans up these properties for free. None of

⁵ During this line of questioning, I did note that Mr. Bush appeared visibly nervous when answering questions about the April 3, 2023 clean-up.

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these transactions are documented on any official records or written agreements. While Mr. Bush had initially told me Mr. Kennedy agreed to use this other equipment without hesitation, his later acknowledgment that Mr. Kennedy had in fact given at least some preference to use his own equipment gave me serious pause.

Mr. Bush confirmed that he received half of the \$400 payment in cash from Mr. Kennedy for the clean-up job. Per Mr. Bush, Mr. Kennedy had volunteered to split the payment, offering to pay Mr. Bush \$200. He told me that Mr. Kennedy affirmatively told him, "I'm going to give you half." When asked why he would accept half of Mr. Kennedy's fee, especially given his position as an elected official of the Village, Mr. Bush stated that it was to pay for the trash dumping fee and equipment rental. In this instance, he said he rented the equipment from Mr. Fausnaugh. He said that he has never "asked" people for payment in doing the voluntary clean-up work throughout the Village and never maintains any profit for his services. He said he lost money on this project because he personally paid to run the trailer through the car wash afterward – none of the \$200 cash he received and distributed covered the wash. Instead, he paid approximately \$70-80 for the Rumpke dumping fee, and the remainder went to Mr. Fausnaugh.

When informed that Mr. Kennedy had provided a completely different version of these same events to me, Mr. Bush told me he did not know why Nick said that. Later in the interview, he claimed that employee Mark Brungs had told Mr. Bush that FO Garrett had come to the Water Department "begging" Mr. Kennedy to participate in this investigation. Again, Mr. Kennedy told me that he had not spoken to FO Garrett regarding the investigation and that his signed, written statement (Exhibit 1) was voluntary.

Notably, after extensive questioning on this topic, Mr. Bush did pause and ask me, even if he did accept cash from any of these transactions, "what's wrong with taking money for that work?" I explained how the Ohio Ethics Law and related statutes explicitly prohibit and criminalize public officials from using their public positions to secure anything of personal value or gain as would manifest an improper influence on the public official. See O.R.C. § 102.03(D). He maintained that his question was hypothetical and that all his clean-up service in the Village, including this April 3 clean-up, was voluntary. When I further asked him about Mr. Kennedy's status as a Village contractor, Mr. Bush stated that he did review and approve Mr. Kennedy's annual contract as a member of Council. However, he stated that this project was "extra" and not included under that contract.

Turning to the alleged comments that he made to FO Garrett at the property site, I directly asked Mr. Bush whether he had made any comments and/or jokes regarding the property odor, or any direction to FO Garrett to "close your legs," or that her "pussy stinks." Mr. Bush laughed in response and stated, "That sounds like something I'd say, but I didn't say it." He maintained he had no recollection about any comments he made to FO Garrett during the clean-up efforts and denied making any jokes directed to her or anyone else. He denied that Mr. Kennedy ever spoke up and requested that he stop making any comments. He stated that FO Garrett indicated that she would bring bleach to the site and he was glad for that, given the decrepit and unclean state of the property. He denied making any vulgar statements.

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Mr. Bush told me he believes these allegations are an effort to remove him from his position. He claimed that ever since he filed to run for Mayor, "they [the remaining Council members and FO Garrett] have been trying to get rid of me." He believes the fact that they "wait[ed] so long" to bring these allegations forward proves that they are politically motivated and untrue. He stated that the Village's Employee Handbook requires complaints of harassment or discrimination to be filed within 15 days.⁶

Regarding the May 18, 2023 incident outside FO Garrett's house, Mr. Bush stated that event had absolutely nothing to do with Village business or Village matters. He denied calling FO Garrett any names. He told me he was with a friend, Jim, nearby and overheard "Tracey...reaming her son's ass for parking crooked." He stated that he and Jim laughed in response, but that he did not call FO Garrett a "bitch" or any other names. FO Garrett's sister and niece were also outside, so Mr. Bush pulled up in his vehicle and jokingly told them he now knew why Tracey did not have a boyfriend. In response, FO Garrett's sister informed Mr. Bush that Tracey indeed had a boyfriend. Mr. Bush told me his response was, "Where is he then?" He stated to FO Garrett's sister that the boyfriend must be a "smart guy" for living so far away from FO Garrett.

At the close of our interview, I asked Mr. Bush to tell me of any other concerns regarding FO Garrett and other Village officials that he had. He stated that FO Garrett is not competent and cannot do her job. He said that 3 people have already quit because of Tracey. He claims the Village pays FO Garrett three times more than anywhere else. He claims that Melanie Smith has stated in a recording that FO Garrett cannot do her job. He believes the Village is significantly behind on financials and meeting minutes because of FO Garrett's deficiencies. I asked him directly whether Mr. Bush planned to terminate FO Garrett upon assuming his Mayor position. He first responded, "I would like to." He further "swore" that he had no plans to replace FO Garrett with Melissa Gartin, who recently resigned from the BPA. On further questioning, Mr. Bush backtracked these comments. He said he simply would like "Tracey to do her job." He said he was not sitting her and stating that Tracey would be fired. He hopes that everyone can move on, learn, and that outstanding issues with Village operations can be fixed.

Mr. Bush was adamant that he was not going to allow Ms. McCain, whom he defeated in the Mayoral election, back on Council as an appointee. Mr. Bush then reiterated his positions that "everyone on Council has slandered [him]" and that this investigation is politically motivated. He said that it was himself versus the rest of Council and described the situation as a "one-sided slope."

Lastly, I spoke to **Rob Fausnaugh** by telephone a few days following my interview with Mr. Bush. Mr. Fausnaugh confirmed that he regularly allows Mr. Bush to use his equipment, including a trailer, to conduct clean-up work in the Village. He confirmed that Mr. Bush has paid him cash for such rentals and that Mr. Bush so did so with respect to a property clean-up around April of this year. He could not recall the exact amount and noted that nothing about this arrangement is reduced

⁶ I have reviewed the Employee Handbook closely and do not find this requirement anywhere. Rather, as set forth below, the Handbook requires such complaints to be "immediately" reported to the Mayor, further noting that employees are required to set forth specific incidents in writing. In response, the Village is to "timely" investigate the Complaint. No specific deadlines are required, nor would the same be appropriate.

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to writing. He had no records or receipts documenting this or any similar transactions with Mr. Bush when Mr. Bush used Mr. Fausnaugh's equipment.

V. Relevant Policies and Applicable Law:

As noted previously, I reviewed various provisions of the Village's Employee Handbook in administering this investigation. The following provisions from the Employee Handbook are pertinent to this investigation and my findings and recommendations below:

[Beginning at Pg. 8]

Section 2.7 Unlawful Discrimination and Harassment

The Village is committed to providing a facility that is safe and free from unlawful discrimination and harassment. *Unlawful discrimination or harassment is behavior directed toward an employee because of his membership in a protected class such as: race, color, religion, sex, national origin, age, ancestry, disability, genetic information, or military status. Unlawful discrimination and harassment is inappropriate and illegal and will not be tolerated. All forms of unlawful discrimination and harassment are governed by this policy and must be reported and addressed in accordance with this policy.*

Definitions: Unlawful discrimination occurs when individuals are treated less favorably in their employment because of their membership in a protected classification. An employer may not discriminate against an individual with respect to the terms and conditions of employment, such as promotions, raises, and other job opportunities, based upon that individual's membership in that protected class.

Harassment is a form of discrimination. Harassment may be generally defined as unwelcome conduct based upon a protected classification. However, harassment becomes unlawful where:

1. Enduring the offensive conduct becomes a condition of continued employment.
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

...

Off Duty Conduct: Unlawful discrimination or harassment that affects an individual's employment may extend beyond the confines of the workplace. Conduct that occurs off duty and off premises may also be subject to this policy.

Complaint Procedure:

Employees who feel they have been subject to unlawful discrimination or harassment by a fellow employee, supervisor, or other individual otherwise affiliated with the Village *shall immediately report the conduct, in writing, to the Mayor, whom shall have the authority*

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED

and responsibility to work directly with the Village's labor counsel to investigate and take appropriate action concerning the complaint. Similarly, employees who feel they have knowledge of discrimination or harassment, or who have questions or concerns regarding discrimination or harassment, shall immediately contact the Mayor. *Late reporting of complaints and verbal reporting of complaints will not preclude the Village from taking action. However, so that a thorough and accurate investigation may be conducted, employees are encouraged to submit complaints in writing via this form and in an expedient manner following the harassing or offensive incident.* All supervisors are required to follow up on all claims or concerns, whether written or verbal, regarding unlawful discrimination and harassment.

Although employees may confront the alleged harasser at their discretion, they are also required to submit a written report of any incidents as set forth above. *When the Village is notified of the alleged harassment, it will timely investigate the complaint. The investigation may include private interviews of the employee allegedly harassed, the employee committing the alleged harassment and any and all witnesses. Information will be kept as confidential as practicable, although confidentiality is not guaranteed. All employees are required to cooperate in any investigation. Determinations of harassment shall be made on a case-by-case basis. If the investigation reveals the complaint is valid, prompt attention and disciplinary action designed to stop the harassment and prevent its recurrence will be taken.*

Retaliation: *Anti-discrimination laws prohibit retaliatory conduct against individuals who file a discrimination charge, testify, or participate in any way in an investigation, proceeding, or lawsuit under these laws, or who oppose employment practices that they reasonably believe discriminate against protected individuals, in violation of these laws.* The law also prevents retaliatory conduct against individuals who are close personal friends or family members with an individual who engaged in protected conduct. The Village and its supervisors and employees shall not in any way retaliate against an individual for filing a complaint, reporting harassment, participating in an investigation, or engaging in any other protected activity. Any employee who feels he has been subjected to retaliatory conduct as a result of actions taken under this policy, or as a result of his relationship with someone who took action under this policy shall report the conduct to the Mayor immediately. Disciplinary action for filing a false complaint is not a retaliatory act.

False Complaints: *Legitimate complaints made in good faith are strongly encouraged; however, false complaints or complaints made in bad faith will not be tolerated.* Failure to prove unlawful discrimination or harassment will not constitute a false complaint without further evidence of bad faith. False complaints are considered to be a violation of this policy.

Corrective Action: *If the Village determines unlawful discrimination, harassment, or retaliation has taken place, appropriate corrective action will be taken, up to and including termination.* The corrective action will be designed to stop the unlawful conduct and prevent its reoccurrence. If appropriate, law enforcement agencies or other licensing bodies will be notified. Any individual exhibiting retaliatory or harassing behavior towards an employee who exercised a right under this policy, or who is a close personal friend or

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family member of someone who exercised a right under this policy, will be subject to discipline, as will any employee who has knowledge of unlawful conduct and allows that conduct to go unaddressed.

On a related note, O.R.C. § 102.03(D) states, in relevant part, the following:

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

VI. Findings of Fact:

Upon my review of all information obtained, I have verified the following relevant findings of fact:

(1) *Legitimacy of Complaints by Tracey Garrett*: I find that the complaints reported by FO Garrett leading to this investigation were made in good faith and followed the procedures outlined by the Employee Handbook. Based on my investigation and review of significant testimony, I have no reason to find any of these complaints to be false or politically motivated. As to timing, FO Garrett and all members of Council other than Mr. Bush confirmed that her concerns were long-running and had been raised long before I was retained to conduct the investigation. Almost every witness agreed that outgoing Mayor Elliott was informed of FO Garrett's complaints and had taken no formal action. Given the totality of my investigation, I can strongly conclude that FO Garrett's complaints were legitimate. Consistent with Village policy and applicable law, absolutely no action must be taken with respect to FO Garrett's employment as a result of her reporting these complaints.

(2) *August 30, 2022 Incident*: I find sufficient evidence to substantiate the following allegation:

On August 30, 2022, Mr. Bush angrily confronted FO Garrett, Ms. McCain, and Ms. Miller in the alley located between the Village offices and the Southwest Pickaway Fire Department. He was screaming, cussed repeatedly, and threatened to make sure that Ms. McCain lost her seat on Council.

While Mr. Bush denies making any statement with respect to Ms. McCain retaining her position on Council, three (3) eyewitnesses consistently and credibly confirmed the same.

I do not find any specific violation of law or Village policy arising from this incident. It is my opinion that Mr. Bush's conduct and statements on this occasion were simply unbecoming of an elected public official.

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(3) *April 3, 2023 Incident:*

- a. I find sufficient evidence to substantiate the following allegation:

On April 3, 2023, Mr. Bush demanded that Mr. Kennedy, a Village contractor, allow him to assist with clean-up work on a residential property located at 108 Mill Street. Mr. Bush required Mr. Kennedy to utilize equipment that Mr. Bush would provide, and Mr. Bush demanded half of the total payment of \$400 for completing this work.

I find Mr. Bush's testimony in response to this allegation not at all credible. Mr. Bush denies that he pushed Mr. Kennedy to permit him to use the equipment of his choice yet confirmed that Mr. Kennedy at one point expressed his desire to use his own equipment. Mr. Bush further claims that Mr. Kennedy voluntarily offered to split payment for the job with Mr. Bush, but I learned of absolutely no motivation that would make Mr. Kennedy want to voluntarily entertain that offer. Mr. Bush denies that he did, or has ever, kept any of the cash received for this job or any other clean-up job that he voluntarily takes on for the Village. I do not find this claim to be credible given that Mr. Bush had to be educated on the Ohio Ethics Law's strict prohibitions on public officials using their position to solicit or otherwise acquire personal gain. He explicitly asked me, if he had kept the money, what was wrong with that?

Mr. Kennedy's testimony, in contrast, was credible and consistent with what he had informed others of in the Village, including FO Garrett. Mr. Kennedy was not at all comfortable with coming forward in this investigation but nonetheless confirmed that he had felt pressured into using Mr. Bush's equipment of choice and paying Mr. Bush cash for the clean-up. This tracked with Mr. Kennedy's position as a Village contractor, with a portion of his livelihood subject to review and approval by Council.

As explained in my below recommendations, I have significant concerns regarding the legal and ethical implications of Mr. Bush's activity in accepting and distributing cash throughout the Village through his clean-up activities. This incident, and other similar incidents, may warrant further investigation or review by a prosecuting attorney and/or the Ohio Ethics Commission.

- b. I find sufficient evidence to substantiate the following allegation:

During the clean-up, FO Garrett arrived at the site to assist. Mr. Bush made repeated vulgar statements to FO Garrett regarding the bad smell (from the property), jokingly claiming that the odor was coming from Ms. Garrett's genitals and stating something to the effect of, "Your pussy stinks please close your legs" repeatedly, even after Mr. Kennedy asked him to stop.

Two (2) of three (3) eyewitnesses, FO Garrett and Mr. Kennedy, consistently testified about the nature of these comments directed toward FO Garrett. My investigation revealed no motive for Mr. Kennedy to alter or fabricate a version of events to match FO Garrett's

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allegations about these statements. If anything, I understood that Mr. Kennedy was more motivated to remain silent about these allegations given Mr. Bush's position on Counsel.

I did not find Mr. Bush's denial of these allegations to be credible. When first presented with these statements, he chuckled and told me that they sounded like something he would say, but denied saying them. Given my overall investigation and Mr. Bush's attitudes toward FO Garrett, it is my opinion that Mr. Bush was not honest when questioned about this particular allegation.

(4) *May 18, 2023 Incident:* Regarding the following allegation:

On May 18, 2023, Mr. Bush was outside Ms. Garrett's house when he overheard her having a heated argument with her son. Mr. Bush allegedly hollered across the street, "That's why she can't keep anyone, she's a bitch!" He then proceeded to walk across the street to repeat the statement to Ms. Garrett's sister and niece.

I am unable to conclusively determine whether Mr. Bush called FO Garrett a "bitch" during this encounter. FO Garrett testified credibly about the above allegation, and Mr. Bush testified credibly regarding how he did in fact make comments about FO Garrett's alleged lack of a significant other in response to this event; he denied calling her a "bitch" or using any other swear words. I did not take time during the investigation to interview FO Garrett's family members as I did not think that would be especially productive or persuasive to this Village investigation. Even assuming Mr. Bush's version of statements made, I conclude that they were inappropriate and unbecoming of an elected public official.

(5) *Other General Concerns Regarding Council Member Bush:* I find sufficient evidence to confirm that Mr. Bush wants FO Garrett removed from office and likely has taken action to uncover wrongdoing by her in order to make that happen. I question Mr. Bush's motives in reporting complaints to the OEC regarding FO Garrett's appointment to her position, which occurred at a time he was not on Council. He also initially acknowledged that he would like to terminate her upon assuming the office of Mayor, but then walked back that assertion with the position that he would want her to have an opportunity to succeed. I did not find Mr. Bush's testimony regarding his amended position to be very sincere or credible. As explained in my below recommendations, Mr. Bush must be strongly informed about Village policy and applicable law on retaliation. Terminating FO Garrett's employment with the Village for any reason related to her protected activity in filing these complaints would be unlawful.

VII. Recommendations:

Based on the foregoing, I recommend the following:

- The Village, either by affirmative action of Council or independently through action of the Village Solicitor, should request either the Ohio Ethics Commission or a duly appointed prosecuting attorney to open an investigation into Mr. Bush's activities on April 3, 2023.

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Specific inquiry should be made into whether Mr. Bush improperly collected cash payment from this or any other property clean-up in contravention of O.R.C. § 102.03(D) or (E). All Village officials and employees should be directed to participate fully in any such forthcoming investigation.

- The Village Council, in consultation with the Village Solicitor, should consider any appropriate legal channels with respect to imposing charges and/or discipline against Mr. Bush for alleged sexual harassment and other inappropriate conduct given the complaints of FO Garrett and findings included in this report. Potential mechanisms for any such discipline include, but are not limited to, O.R.C. § 731.45 and O.R.C. §§ 3.07-3.10. Mr. Bush must be afforded due process and an opportunity to be heard according to such applicable law.
- The Village should secure a training for Mr. Bush and all other elected officials on Ohio's Ethics Law and related statutes. Particularly with newly elected leadership entering office in January 2024, it is imperative for the Village's elected officials to understand and acknowledge the parameters of Ohio's Ethics Law.
- The Village should secure a sexual harassment / non-discrimination training for Mr. Bush and make this training available to all other Village elected officials and employees.
- Mr. Bush must be advised, perhaps through a training, regarding the anti-retaliation provisions under Ohio law and Village policy. He should be expressly advised of the recommendation in this report that terminating FO Garrett's employment with the Village for any reason related to her protected activity in filing these complaints would be unlawful.
- The Village may consider hiring an outside consultant and/or mediator to assist with repairing inter-office relationships within the Village, promoting a positive work environment, and ensuring that FO Garrett and Mr. Bush can continue to work in their respective positions for the residents of the Village they serve.

Should you have any questions regarding this report, the information I have reviewed, or my recommendations, please contact me. Thank you.

Respectfully submitted,

/s/ David C. Moser

David C. Moser, Esq.